

No. 11005

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CITY OF TUCSON, a Municipal Corporation,  
Appellant,  
vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Appellee.

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Transcript of Record

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Upon Appeals from the District Court of the United States  
for the District of Arizona

FILED

MAY 3 - 1945

PAUL P. O'BRIEN,  
CLERK



No. 11002

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CITY OF TUCSON, a Municipal Corporation,  
Appellant,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
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Transcript of Record

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Upon Appeals from the District Court of the United States  
for the District of Arizona



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

THOMAS J. ELLIOTT, Esquire,  
615 Valley National Building,  
Tucson, Arizona.

Attorney for Appellant.

DARNELL & ROBERTSON,  
410 Valley National Building,  
Tucson, Arizona.

Attorneys for Appellee. [3]

In the Superior Court of the State of Arizona  
In and For the County of Pima

No. 24185

CITY OF TUCSON, a Municipal Corporation,  
Plaintiff,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a corporation,  
Defendant.

### COMPLAINT

Plaintiff alleges:

#### I.

That the plaintiff, the City of Tucson, is a municipal corporation, duly organized and existing under its Charter and the Constitution and laws of the State of Arizona, and located within the County of Pima, State of Arizona. That the defendant, The Tucson Gas, Electric Light and Power Company, is a corporation duly organized and existing under the laws of the State of Colorado, and is duly authorized to, and is, transacting business within the State of Arizona and County of Pima.

#### II.

That said defendant is engaged in the business of generating, distributing and supplying electric light and power, and natural and artificial gas to the City of Tucson and its inhabitants, as well as to consumers located outside of the City of Tucson and within the State of Arizona.

## III.

That said defendant is the owner of property located in the City of Tucson, Pima County, Arizona, as well as property located outside the City of Tucson and within the State of Arizona, and has certain interests under franchises and contracts for the purchase, sale and distribution of electricity and gas with other corporations, which property and interests in property are hereinafter more particularly described. That all of said property and interests in property is devoted to a public use and is used or useful by the defendant in supplying electricity and natural and artificial gas to said City of Tucson and its inhabitants and to said consumers located outside of the City of Tucson and within the State of Arizona. That said property and interests in property are described as follows:

All and singular the premises, property, assets, rights and franchises of defendant of whatever character, including, among other things, all right, title and interest of defendant in and to all plants for the generation of electricity by water, steam or other power; all power houses, gas plants, gas holders, substations, transmission lines, distributing systems; all offices, buildings and structures, and the equipment thereof; all machinery, engines, boilers, dynamos, machines, regulators, meters, transformers, generators and motors; all appliances whether electrical, gas or mechanical, conduits, cables and lines; all mains and pipes, service pipes, fittings, valves and connections, poles, wires, tools,

implements, apparatus, furniture, and chattels; all municipal franchises and other franchises; all line for the transmission and distribution of electric current, or gas including towers, poles, wires, cables, pipes, conduits, street lighting systems and all apparatus for use in connection therewith; all real estate, lands, leaseholds; all easements, servitudes, licenses, permits, rights, powers, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same and all [4] the right, title and interest of defendant in and to all other property of any kind or nature appertaining to or used or occupied or enjoyed in connection with any property hereinbefore described; all contracts for the purchase or sale of electricity or gas; all leases and operating agreements; and fuels, materials, stores and supplies; together with all and singular the tenements, hereditaments and appurtenances belonging or in any wise appertaining to the aforesaid premises, property, assets, rights and franchises or any part thereof, with the reversion and reversions, remainder and remainders, and all the estate, right, title and interest and claim whatsoever, at law as well as in equity, which defendant now has or may hereafter acquire in and to the aforesaid premises, property, assets, rights and franchises and every part and parcel thereof, excepting, however, from the properties made the subject of this complaint, all bills, notes and accounts receivable, cash on hand or in bank, shares of stock and other certificates or evidences of interest therein, and all bonds, notes



and other evidences of indebtedness or certificates of interest therein and other securities owned by defendant, and defendant's franchise to be a corporation. Said property and interests in property, belonging to the defendant, and so sought to be condemned, specifically includes, but is not limited to, the following:

## FIRST PART

### (Plants)

The following electric generating plants, gas generating plant, gas holders, steam plant, gas regulating stations, substations and other properties of the Company, including all power houses, transmission lines, buildings, pipes, structures and works, and the lands of the Company on which the same are situated, and all the Company's lands, easements, rights, rights-of-way, water rights, rights to the use of water, including all the Company's right, title and interest in and to any and all decrees therefor, permits, franchises, consents, privileges, licenses, poles, towers, wires, switch racks insulators, pipes, machinery, engines, boilers, motors, automobiles, trucks, office furniture and fixtures, regulators, meters, tools, applicances, equipment, appurtenances and supplies, forming a part of or appertaining to said plants, holders, sites, stations or other properties, or any of them, or used or enjoyed, or capable of being used or enjoyed in conjunction or connection therewith, all situated in the State of Arizona, more particularly described as follows:

## PIMA COUNTY

## 1. Tucson Power Plant and Gas Plant

All of Lots 1, 2, 3, 4, 5, and 6 in Block 171 of the City of Tucson, Pima County, Arizona, according to the survey, field notes and map made by S. W. Foreman and approved by the Mayor and Common Council on June 26, 1872, a copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70 thereof, except that portion lying northerly or easterly of the southwesterly line of the right of way of the Southern Pacific Railroad Company as the same passes through said Block.

That piece or parcel of land formerly constituting a part of North Meyer Street in the City of Tucson, lying between the west line of Block 171, and the east line of Block 172, and between the south line of West Fifth Street and the north line of West Sixth Street, all of which was vacated as a public street by ordinance No. 636 of the Ordinances of the Mayor and Council of the City of Tucson.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Lot 1 in Block 172 of the City of Tucson, Pima County, Arizona, according to the map of Subdivision of Lot 1, Block 172, of record, in the office of the County Recorder of Pima County, Arizona, in Book 1 of Maps and Plats at page 10 thereof.

## 2. Cortaro Power Plant

That portion of the northwest quarter of the southeast quarter of Section 26, Township 12 South,

Range 12 East of the G & S R B & M, Pima County, Arizona, more particularly described as follows:

[5]

Beginning at a point in the south line of said northwest quarter of the southeast quarter of Section 26, which point is 1051.7 feet Easterly from the southwest corner of said northwest quarter of the southeast quarter of Section 26; thence West-erly along the said south line of the northwest quar-ter of the southeast quarter of Section 26 a distance of 553.5 feet to a point; thence Northerly 498.2 feet from and parallel to the west line of the said North-west quarter of the Southeast quarter of Section 26 a distance of 320.1 feet to a point; thence Easterly 320.1 feet from and parallel to the south line of the said Northwest quarter of the Southeast quarter of Section 26 a distance of 262.8 feet to a point on the Southwest right-of-way line of the Cortaro Water Company's Cortaro Canal, which right-of-way line is 185 feet southwesterly from and parallel to the center line of the main line tract of the Southern Pacific Railroad; thence Southeasterly along said canal right-of-way line a distance of 431.9 feet to the point of beginning, containing 3 acres, more or less.

## PART SECOND

### (Substations)

The following electric substations and substation sites of the Company, including all buildings, struc-tures, towers, poles, lines, and all equipment, appli-cances and devices for transforming, converting and



distributing electric energy, and all the right, title and interest of the Company in and to the land on which the same are situated, and all of the Company's lands, easements, rights-of-way, rights, franchises, privileges, machinery, equipment, appliances, devices, appurtenances and supplies forming a part of said substations or any of them, or used or enjoyed, or capable of being used or enjoyed, in conjunction or connection with any thereof, all situated in the State of Arizona, more particularly described as follows:

### PIMA COUNTY

#### 1. New Sawtelle Substation (Tucson)

The East Half of Lot 14 D Pastime Acres Resubdivision, Pima County, Arizona, according to the map or plat thereof, of record in the office of the County Recorder of Pima County, Arizona, in Book 5 of Maps and Plats at page 37 thereof.

#### 2. 36th Street Substation (Tucson)

All of Lot 8, in Block 28 of Grand View Addition to the City of Tucson, Pima County, Arizona, according to the map and plat of said addition of record in the office of the County Recorder of Pima County, Arizona, in Book 2 of Maps and Plats at page 39 thereof.

#### 3. Grant Substation (Tucson)

Lots One (1) and Four (4) of the Resubdivision of the East Half (E $\frac{1}{2}$ ) of Lots Two (2) and Three (3) in Block One (1) of Sierra Vista Subdivision, in Pima County, Arizona, a map of said Resubdivision being of record in the office of the County



Recorder of Pima County, Arizona, in Book 6 of Maps and Plats, at page 53 thereof.

### PART THIRD

#### (Miscellaneous Property)

The following warehouses, buildings, structures, works and sites and the Company's lands on which the same are situated, and all easements, rights, rights-of-way, permits, franchises, consents, privileges, licenses, machinery, [6] equipment, furniture and fixtures, appurtenances and supplies forming a part of said warehouses, buildings, structures, works and sites, or any of them, or used or enjoyed or capable of being used or enjoyed in connection or conjunction therewith, situated in the State of Arizona, more particularly described as follows:

#### PIMA COUNTY

##### 1. Tucson Warehouse and Loading Platform

All that part of Lot 7 in Block 56 of the City of Tucson, Pima County, Arizona, according to the official field notes, map and survey made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, a copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70 thereof, South of Right-of-Way of Southern Pacific Railroad.

Also all those parts of Lots 10 and 11 in said Block 56 described as follows, to wit:

Beginning at the southwest corner of said Lot 11; run thence north along the west line of said Block 56 for a distance of 132 feet to the northwest corner of Lot 10; thence east along the north line of Lot 10, a distance of 60 feet; thence south, parallel with the west line of said Block a distance of 132 feet to a point on the south line of said Lot 11; run thence westerly along the south line of said Lot 11, a distance of 60 feet more or less to the place of beginning.

## 2. Tucson Regulating and Metering Station

All that part of the southwest quarter of Section 34, Township 14 South of Range 14 East, G & S R B Q M, Pima County, Arizona, more particularly described as follows, to wit:

Commencing at the corner common to Sections 33 and 34 and 3 and 4, Townships 14 and 15, South of Range 14 East, G & S R B & M, Pima County, Arizona, run thence S.  $90^{\circ} 41'$ , 404 feet to the point of intersection of the southerly prolongation of the east line of Pima County Highway No. 295 and the south line of Section 34, Township 14 South of Range 14 East; run thence N.  $1^{\circ} 0' W.$ , along the east line of said right-of-way for a distance of 683.6 feet to the point of intersection of the South line of the Western Gas Company easement as more fully appears of record in the office of the County Recorder of Pima County, Arizona, in Book 51 of Miscellaneous Records, page 21, and the east right-of-way line of said Pima County Highway No. 295, which point is the true point of beginning;

run thence N.  $1^{\circ}$  W., along the said east right-of-way line of said road, a distance of 218 feet to a point; run thence south  $74^{\circ} 13'$  E., on a line parallel with the south line of said Western Gas Company easement, for a distance of 208.71 feet to a point; run thence S.  $1^{\circ}$  E., parallel with the east line of said Pima County Highway No. 295, for a distance of 218 feet to a point on the south line of said Western Gas Company easement; run thence N.  $74^{\circ} 13'$  W., along the south line of said Western Gas Company easement for a distance of 208.71 feet to the point of beginning.

## PART FOURTH

### (Gas Distribution System)

The gas distribution system of the Company, including all pipes, [7] pipe lines, motors, gas boosters, regulators, meters and appurtenances, appliances, devices and equipment, all the Company's other property, real, personal or mixed, forming a part of, or used, occupied or enjoyed in connection with or in any way appertaining to said distribution system, together with all of the company's rights-of-way, easements, permits, privileges, municipal or other franchises, licenses, consents and rights for or relating to the construction, maintenance or operation thereof through, over, under or upon any public streets or highways, or public or private lands situated in the County of Pima, State of Arizona, more particularly described as follows:

That certain gas distribution system as located,



constructed and equipped, together with all franchises, permits and consents under which said system is or may be operated in or adjacent to the City of Tucson, in the County of Pima.

And also all branches, extensions, improvements and developments of or appertaining to or connected with said gas distribution system, and all other gas distribution systems of the Company and parts thereof wherever situated, whether connected or not connected with the foregoing distribution system, whether for the distribution of manufactured or natural gas, and whether now owned or hereafter acquired, as well as all rights-of-way, easements, privileges, permits, municipal or other franchises, consents and rights for, or relating to the construction, maintenance or operation thereof, or any part thereof, through, over, under or upon public or private lands, whether now owned or hereafter acquired.

## PART FIFTH

### (Electric Distribution System)

The following electric distribution systems of the Company, including towers, poles, wires, insulators, appliances, devices, appurtenances and equipment, and all the Company's other property, real, personal or mixed, forming a part of, or used, occupied or enjoyed in connection with or in any way appertaining to said distribution systems, or any of them together with all of the Company's rights-of-way, easements, permits, privileges, municipal or other franchises, licenses, consents and

rights for or relating to the construction, maintenance or operation thereof through, over, under or upon any public streets or highways, or public or private lands situated in the County of Pima, State of Arizona, more particularly described as follows:

That certain electric distribution system as located, constructed and equipped, together with all franchises, permits and consents under which said system is or may be operated in, or in the vicinity of, the City of Tucson, in the County of Pima; except, however, all ornamental standards or brackets now owned by the Company and forming a part of the street lighting system in the City of Tucson, in the County of Pima.

That certain electric distribution system as located, constructed and equipped, together with all franchises, permits and consents under which said system is or may be operated in or adjacent to the village of Marana, in the County of Pima.

And also all branches, extensions, improvements and developments of or appertaining to or connected with said electric distribution systems, or any of them, and all other electric distribution systems of the Company and parts thereof wherever situated, and whether now owned or hereafter acquired, as well as all rights-of-way, easements, privileges, permits, municipal or other franchises, consents and rights for or relating to the constructions, maintenance or operation thereof, or any part thereof, through, over, under or upon public or private lands, whether now owned or hereafter acquired. [8]

## PART SIXTH

## (Electric Transmission and Distribution Lines)

The following electric transmission and/or distribution lines of the Company, including the towers, poles, pole lines, wires, switch racks, insulators, supports, guys, telephone and telegraph lines and other appliances and equipment, and all other property of the Company, real, personal or mixed, forming a part thereof or appertaining thereto, together with all of the Company's rights-of-way, easements, permits, privileges, municipal or other franchises, consents, licenses and rights, for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways or other lands, public or private, all situated in the State of Arizona and the Counties of Pima and Santa Cruz, more particularly described as follows:

That certain 45,000-volt, Three Phase, single circuit wood pole transmission line known as the Tucson-Nogales transmission line extending from the Tucson Plant of the Company in Tucson, Pima County, southerly to the northern boundary of the City of Nogales, Santa Cruz County, a distance of approximately 67 miles, all as/located, constructed and equipped in the Counties of Pima and Santa Cruz, State of Arizona; and all distribution and branch lines therefrom and thereof in the County of Pima.

Also all extensions, branches, taps, developments and improvements of or to any and all of the above



described transmission and/or distribution lines, telephone and telegraph lines or any of them, as well as all rights-of-way, easements, permits, privileges, rights and municipal or other franchises, licenses and consents, for or relating to the constructions, maintenance or operation of said lines or any of them, or any part thereof, under or upon any public streets or highways or any public or private lands, whether now owned or hereafter acquired.

## PART SEVENTH

1. That certain tract of land described as lots 2 and 3 of the resubdivision of the east one-half of lots 2 and 3 in block 1 of Sierra Vista Subdivision in Pima County, Arizona, a map of said resubdivision being of record in the office of the County Recorder of Pima County in Book 6 of Maps and Plats at page 53 thereof.

2. That certain tract of land described as that certain part of the northwest one-quarter of the southeast one-quarter of Section 20, township 13 South, Range 14 East, G. & S. R. B. & M., Pima County, Arizona, described more particularly as follows, to wit: Beginning at a point 123.8 feet south of the quarter section corner of said Section 20 at the point of intersection of the south boundary of the right of way of River Road, a Pima County highway, and the west boundary line of the northwest one-quarter of the southeast one-quarter of said Section 20, run thence in a southerly direction along said west boundary line thirty feet to a point,

run thence in an easterly direction parallel to the north boundary line of said southeast one-quarter of Section 20, thirty feet to a point, run thence northerly parallel to the west boundary line of said southeast one-quarter of Section 20 to a point on the south boundary line of said River Road, run thence in a westerly direction along the south boundary line of River Road to the place of beginning.

3. That certain gas transmission line and distribution system, located in the counties of Pima and Pinal, State of Arizona, and serving the Marana Airport, together with all franchises, permits, easements and consents under which said line and system is operated.

4. The following electric transmission and distribution lines of the Company, including the towers, poles, pole lines, wires, switch racks, [9] insulators, supports, guys, telephone and telegraph lines and other appliances and equipment, and all other property of the Company, real, personal and mixed, forming a part thereof or appertaining thereto, together with all of the Company's rights of way, easements, permits, privileges, franchises, licenses, and rights pertaining thereto, all situated in the State of Arizona, and the Counties of Pima, Pinal, Santa Cruz and Cochise, more particularly described as follows: those certain transmission lines and distribution systems serving Fort Huachuca, Consolidated-Vultee Aircraft Corporation, Marana Airport, Ryan Air School, and Davis-Monthan Field.



## IV.

That so far as the plaintiff can determine, the defendant is the sole owner of and claimant to the above described property and interests in property; upon information and belief, that The Chase National Bank of the City of New York, New York, *New York*, a corporation, claims some lien against part or all of the above described property and interests in property by virtue of a certain Indenture bearing date as of April 1, 1941, and recorded in the office of the County Recorder of Pima County, Arizona, in Book 149 of Realty Mortgages at page 1, and following.

That by the terms and provisions of the Charter under which the plaintiff is organized and existing the plaintiff is authorized to acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate works and appliances within and without the City for supplying the City and its inhabitants and persons, firms and corporations outside the City, including other municipal corporations with water, gas, electric light, heat or power, telephone service, telegraph service, or other works or appliances, for the production or distribution of any public utility services within or without said City. That the plaintiff is also authorized by statute, and particularly by Sections 27-901 and 27-906 A.C.A., 1939, to condemn property of the nature hereinabove described.

## V.

That the property sought to be condemned herein is to be used by the plaintiff for the purpose of

supplying electric light and power and natural and artificial gas to the City of Tucson and its inhabitants, as well as to consumers located outside of the City of Tucson and within the State of Arizona, it being intended that after acquiring said property the plaintiff shall use the same for the purposes aforesaid.

#### VI.

That the property and interests in property above described constitute all of the property of the defendant used or useful for the purpose of supplying and distributing electric light and power and artificial and natural gas to the City of Tucson and its inhabitants and to consumers located outside of the City of Tucson and within the State of Arizona within the area in which the defendant is now operating and supplying such commodities and services.

#### VII.

That the taking of the above described property and interests in property is for the public use and such taking is necessary for the operation and maintenance of a municipally owned electric light and power utility and for the supplying and distribution of electricity and natural and artificial gas to the City of Tucson and its inhabitants and to consumers located outside of said City and within the State of Arizona and within the area presently served by the defendant.

#### VIII.

That the above described property is now devoted to a public use and that the public use to

which it is sought to be applied by the plaintiff is a more necessary public use. [10]

IX.

That the plaintiff proposes and intends to finance the acquisition of the above described property, and interests in property pursuant to the provisions of the Municipal Revenue Bond Act of 1943, being Chapter 31 of the Laws of 1943.

X.

That the Mayor and Council of the City of Tucson have duly passed and adopted a resolution which is now in full force and effect, finding and declaring that the above described property and interests in property are necessary to the City of Tucson for the uses hereinabove mentioned, and authorizing and directing the City Attorney to institute an action to condemn said property and interests in property and to acquire title thereto for said uses.

Wherefore, the plaintiff prays judgment:

1. Determining and ascertaining the value of the property and interests in property sought to be condemned.
2. Condemning the estate and interest of the defendant, in and to said property and interests in property.
3. That upon payment by the plaintiff unto the defendant, or to any person who may be determined herein to be entitled thereto, or upon payment into court of the sum of money found in such



judgment to be just compensation for said property and interests in property, the plaintiff do have final judgment of condemnation of said property, vesting title thereto in the plaintiff.

4. For such other and further relief as to this honorable court may appear equitable and just in the premises.

JOHN D. LYONS, JR.,

City Attorney

THOMAS H. McKAY,

Assistant City Attorney

Attorneys for Plaintiff

J. D. LYONS, JR.

Of Counsel

[Endorsed]: Filed Feb. 2, 1944. [11]

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[Title of Superior Court and Cause.]

### SUMMONS

The State of Arizona to the above named defendant the Tucson Gas, Electric Light and Power Company, a corporation,

You are hereby summoned and required to appear and defend in the above entitled action in the above entitled court, within twenty days, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, or within thirty days, exclusive of the day of service, if served without the State of Arizona; and you are

hereby notified that in case you fail so to do, judgment by default will be rendered against you for the relief demanded in the complaint.

The name and address of plaintiff's attorney is John D. Lyons, Jr., City Attorney, 905 Valley National Bldg., Tucson, Arizona.

Given under my hand and the seal of the Superior Court of the State of Arizona in and for the County of Pima, this 12th day of January, 1944.

BELLE D. HALL,

Clerk.

By GRAYCE I. GIBSON,

Deputy Clerk.

[Superior Court Seal]

Office of the Sheriff,

County of Pima, State of Arizona—ss.

I hereby certify that I received the within summons Jan. 14, 1944, and personally served same on the within named The Tucson Gas, Electric Light and Power Company, a corporation, being the defendants named in said summons, by leaving with Max Pooler, manager of the corporation, at 9:30 A. M., Jan. 17, 1944, in the County of Pima a copy of said summons, to which was attached a true copy of the complaint mentioned in said summons.

Dated this 17th day of Jan. A. D. 1944.

Fees, service 1.....\$1.500

Copies .....\$

Travel 1 miles .....\$ .30

Total .....\$1.80

ED. F. ECHOLS,

Sheriff.

By M. J. VAN VORST,

Deputy Sheriff.

[Endorsed]: Filed Feb. 2, 1944. [12]

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[Title of Superior Court and Cause.]

### NOTICE

To the above named Plaintiff, and to John D. Lyons, Jr., City Attorney, and Thomas H. McKay, Assistant City Attorney, Attorneys for said Plaintiff:

Please take notice that the defendant, The Tucson Gas, Electric Light and Power Company, a corporation, will on Monday, the 31st day of January, 1944, at 9:30 o'clock in the forenoon of that day, file in the Superior Court of the State of Arizona, in and for the County of Pima, and in the office of the Clerk of said Court, in which Court the said action is now pending, a petition and bond for the removal of said action from the said Superior Court of the State of Arizona, in and for the County of Pima, to the District Court of the United States, for the District of Arizona, and on said 31st day of

January, 1944, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at Courtroom No. 1 of the said Superior Court of the State of Arizona, in and for the County of Pima, in the Court House in the City of Tucson, Pima County, Arizona, said petition and bond will be presented by said defendant to the said Superior Court of the State of Arizona, in and for the County of Pima, and said petition and bond will at that time be called for hearing before the said Superior Court, at which time and place you may be present if you so elect.

Copies of said petition and bond are hereto attached and made a part of this notice.

Dated this 29th day of January, 1944.

DARNELL & ROBERTSON

By GEORGE R. DARNELL,

Attorneys for Defendant.

Service of this Notice and attached Petition and Bond acknowledged this 29th day of January, 1944.

JOHN D. LYONS, JR.

THOS. H. McKAY

Attorneys for Plaintiff.

per JDL

[Endorsed]: Filed Feb. 2, 1944. [13]



[Title of Superior Court and Cause.]

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES

To the Honorable Superior Court of the State of Arizona, in and for the County of Pima:

The petition of the Tucson Gas, Electric Light and Power Company, a corporation, the above named defendant, respectfully shows:

1. That the above entitled action has been brought, and is now pending, in the above named Superior Court of the State of Arizona, in and for the County of Pima, in which the above named City of Tucson, a Municipal Corporation, is plaintiff and the Tucson Gas, Electric Light and Power Company, a corporation, is defendant.

2. That this action is an action at law of a civil nature, to-wit: an action by the plaintiff to condemn all the property owned by the defendant in Pima, Pinal, Santa Cruz and Cochise Counties in the State of Arizona, which is devoted to public service, to-wit: the generating, obtaining and distributing of electrical energy, and in the obtaining, manufacturing and distributing of gas, and to take possession of defendant's said property and devote it to said plaintiff's use.

3. Your petitioner further shows that this action involves a controversy between citizens of different states; that the plaintiff is a municipal corporation created, organized and existing under and by virtue of its Charter and the Constitution and Laws



of the State of Arizona and is located within the County of Pima, State of Arizona, and is a citizen and resident of said State of Arizona; that the defendant is a corporation created, organized and existing under and by virtue of the laws of the State of Colorado and is a citizen and resident of the State of Colorado and is not a citizen or resident of the State of Arizona; and that said City of Tucson at the time when this suit was instituted, ever since has been, and now is a citizen and resident of the State of Arizona, and at the time when this suit was instituted the said defendant was, ever since has been, and now is a citizen and resident of the State of Colorado and not a citizen or resident of the State of Arizona.

4. That this action is one in which the District Courts of the United States are given original jurisdiction.

5. That the time in which your petitioner, the defendant in this action, is required by the laws of the State of Arizona to answer or plead to the complaint in the above entitled action has not yet expired.

6. That the matter in controversy in this action exceeds exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

7. That your petitioner offers herewith a bond with good and sufficient surety conditioned that it will enter in the District Court of the United States, for the District of Arizona, at Tucson, Arizona, within thirty (30) days from the filing of this petition, a certified copy of the record in this action,

and will pay all costs that may be awarded against it by the said District Court of the United States, for the District of Arizona, in case said court shall hold that this action was wrongfully or improperly removed thereto. [14]

8. That prior to the filing of this petition and of said bond for removal of this cause, written notice of the intention of said defendant to file said petition and bond was given by your petitioner to the plaintiff, as required by law, and a true copy of said notice, with proof of the service of the same, is hereto attached and made a part hereof.

Wherefore, your petitioner prays that this Honorable Court accept said petition and bond and the surety thereon, and do make an order that this action be removed to the District Court of the United States, for the District of Arizona, and that this Honorable Court proceed no further in this action, except to accept said petition and bond and order such removal.

THE TUCSON GAS, ELEC-  
TRIC LIGHT AND POWER  
COMPANY,

a corporation,

By M. A. POOLER

Its President

[Corporate Seal]

State of Arizona

County of Pima—ss.

M. A. Pooler, being first duly sworn, deposes and says: That he is President of The Tucson Gas,

Electric Light and Power Company, a corporation, defendant named in the above entitled and numbered action; that he makes this affidavit for and on behalf of said defendant, being thereunto duly authorized; that he has read the foregoing petition for removal to the District Court of the United States, for the District of Arizona, in the above entitled action and knows the contents thereof, and that the matters therein stated are true in substance and in fact.

M. A. POOLER

Subscribed and sworn to before me, the undersigned notary public, this 28th day of January, 1944.

[Seal]

MABELLE NICHOLSON

Notary Public.

My commission expires: Feb. 11, 1947.

DARNELL & ROBERTSON

By GEORGE R. DARNELL

A Member of the Firm

Attorneys for Defendant.

[Endorsed]: Filed Feb. 2, 1944. [15]

---

[Title of Superior Court and Cause.]

BOND FOR REMOVAL TO THE DISTRICT  
COURT OF THE UNITED STATES

Know All Men By These Presents:

That we, The Tucson Gas, Electric Light and Power Company, a corporation, as principal, and the United States Fidelity and Guaranty Company,



a corporation organized under the laws of the State of Maryland, and authorized to transact business as a surety company and to become surety upon bonds in the State of Arizona and in the courts of the United States, as surety, are held and firmly bound unto the City of Tucson, a municipal corporation, its successors or assigns, the plaintiff in the above entitled action, in the penal sum of Five Hundred Dollars (\$500.00), lawful money of the United States of America, to be paid unto the said City of Tucson, plaintiff, for which payment well and truly be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Signed and executed by us this 28th day of January, 1944.

The condition of this obligation is such that,

Whereas, the said The Tucson Gas, Electric Light and Power Company, a corporation, defendant in the above entitled action, has applied by petition to the Superior Court of the State of Arizona, in and for the County of Pima, for the removal of the above entitled action from the Superior Court of the State of Arizona, in and for the County of Pima, to the District Court of the United States for the District of Arizona, and is about to file such petition and bond in the Superior Court.

Now, Therefore, if the said The Tucson Gas, Electric Light and Power Company, defendant, shall enter in the said District Court of the United States, for the District of Arizona, within thirty

(30) days from the date of the filing of the petition for removal, a certified copy of the record in said action, and shall well and truly pay all costs that may be awarded by the said District Court of the United States, for the District of Arizona, if the said court shall hold that said action was wrongfully or improperly removed thereto then this obligation shall be void; otherwise to remain in full force and effect.

[Seal]

THE TUCSON GAS, ELECTRIC LIGHT AND POWER COMPANY,

a corporation,

By M. A. POOLER

Its President

UNITED STATES FIDELITY AND GUARANTY COMPANY,

a corporation,

By H. R. TALMAGE

Attorney-in-Fact

Approved this 31st day of January, 1944.

[Seal]

WM. G. HALL

Judge of The Superior Court of the State of Arizona, in and for the County of Pima. [16]

[Endorsed]: Filed Feb. 2, 1944. [17]

[Title of Superior Court and Cause.]

ORDER

The Tucson Gas, Electric Light and Power Company, a corporation, the defendant in the above entitled action, having presented to this Court its petition for the removal of the above entitled cause to the District Court of the United States, for the District of Arizona, and having also presented a bond in due form for such removal, and due notice of the presentation of said petition and bond having been given,

It Is Now Ordered that said petition and bond be accepted and that this action be, and it is hereby, removed from the Superior Court of the State of Arizona, in and for the County of Pima, to the District Court of the United States, for the District of Arizona, that the Clerk is hereby directed to make up the record in said cause for transmission to said Court forthwith, and that this Court proceed no further in this cause.

Done in open Court this 31st day of January, 1944.

WM. G. HALL

Judge of the Superior Court of the State of Arizona, in and for the County of Pima.

[Endorsed]: Filed Feb. 2, 1944. [18]

In the United States District Court  
For the District of Arizona

No. Tucson—212 Civil

CITY OF TUCSON, a Municipal Corporation,  
Plaintiff,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Defendant.

To: City of Tucson, a Municipal Corporation,  
Plaintiff, and John D. Lyons, Jr., City Attor-  
ney, and Thomas H. McKay, Assistant City  
Attorney, Attorneys for Plaintiff.

#### NOTICE OF REMOVAL

You and each of you will please take notice that on the 31st day of January, 1944, by an order of the Superior Court of the State of Arizona, in and for the County of Pima, the above entitled cause was duly transferred from said Court to the District Court of the United States for the District of Arizona, at Tucson, and that a transcript of the record in said cause has this day been duly filed in said United States District Court.

Dated this 2nd day of February, 1944.

DARNELL & ROBERTSON

By GEORGE R. DARNELL,

A Member of the Firm

Attorneys for Defendant.



Copy received this 2nd day of February, 1944.

JOHN D. LYONS, JR.

City Attorney

By THOS. H. McKAY

Assistant

Attorneys for Plaintiff

[Endorsed]: Filed Feb. 2, 1944. [19]

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In the Superior Court of the State of Arizona

In and For the County of Pima

No. 24185

CITY OF TUCSON, a Municipal Corporation,  
Plaintiff,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Defendant.

MOTION OF DEFENDANT TO DISMISS

Comes now the above named defendant, The Tucson Gas, Electric Light and Power Company, a corporation, and moves the court to dismiss the complaint in the above entitled action against it for the reason that said complaint fails to state a claim against the defendant upon which relief can be granted.



Dated this 31st day of January, 1944.

Respectfully submitted,

DARNELL & ROBERTSON

By GEORGE R. DARNELL

A Member of the Firm

Attorneys for Defendant.

. . . No allegation is contained in said complaint setting forth the power or authority of the plaintiff to institute an action in condemnation against the defendant, or to otherwise acquire, by any method, the property of the defendant. The plaintiff has no power or authority to condemn the property of this defendant and will have none until and unless an election shall have been held submitting the question as to whether the City shall be empowered or authorized to acquire the property of the defendant to the taxpayers of the City, who must be qualified electors, and a majority of these taxpayers vote in the affirmative to grant the City such power or authority. . . . The Statutes of Arizona fail to provide adequate and appropriate machinery for the ascertaining of constitutional compensation which defendant would be entitled to receive in a condemnation proceeding to acquire its property.

The Arizona statutes do not make suitable and adequate provision for the ascertainment of compensation and payment thereof for the taking of public utility property in that Article 9 of the 1939 Arizona Code, Sections 27-901 to 27-921, in-

clusive, contemplate only the value of real estate and improvements.

Respectfully submitted,

DARNELL & ROBERTSON

By GEORGE R. DARNELL

A Member of the Firm

Attorneys for Defendant. [20]

Copy received this 31st day of January, 1944.

JOHN D. LYONS, JR.,

City Attorney

By THOS. H. McKAY,

Assistant

Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 2, 1944. [21]

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[Title of Court and Cause.]

Minute Entry of February 10, 1944

This case comes on for hearing this day on the Defendant's Motion to Dismiss. George Darnell, Esquire, is present on behalf of the Defendant. John D. Lyons, Esquire, is present on behalf of the Plaintiff. Said counsel for the defendant states ready. Said counsel for the plaintiff states desire for full time under the rule to prepare argument and asks for continuance. Said counsel for the defendant requests hearing at this time.

It Is Ordered that this case be continued to the hour of ten o'clock a. m., Monday, February 14, 1944. [22]

[Title of Court and Cause.]

Minute Entry of March 6, 1944

This case comes on regularly for hearing this day on the Defendant's motion to dismiss. George Darnell, Esquire, is present as counsel for the Defendant. John D. Lyons, Esquire, is present on behalf of the Plaintiff.

The said motion is now duly argued and submitted.

It Is Ordered that counsel be allowed to Saturday, March 11, 1944, to file additional memorandum.

[23]

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[Title of Court and Cause.]

Minute Entry of March 9, 1944

George Darnell, Esquire, is present as counsel for the Defendant. John D. Lyons, Esquire, is present on behalf of the plaintiff.

Said counsel for the defendant now offers amendment to defendant's motion to dismiss. Said counsel for the plaintiff states no objection inasmuch as it is a jurisdictional matter which under the rule the defendant has the right to raise.

It Is Ordered that the defendant be allowed to file amendment, and

It Is Further Ordered that the defendant's time to file memorandum on grounds one and two of the motion to dismiss, heretofore argued, be extended to March 16, 1944, and

It Is Further Ordered that counsel for the plain-

tiff be allowed to March 16, 1944, to file memorandum in re amendment to motion to dismiss, and

It Is Further Ordered that Monday, March 20, 1944, be fixed as the date for argument on third ground for motion to dismiss. [24]

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In the United States District Court  
For the District of Arizona

Civ. No. 212 Tucson

CITY OF TUCSON, a Municipal Corporation,  
Plaintiff,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Defendant.

### AMENDMENT OF MOTION OF DEFENDANT TO DISMISS

Comes now the above defendant and by way of amendment or addition to its motion to dismiss hereby presents to the court a third ground or reason why the said complaint in this action fails to state a claim against the defendant upon which relief can be granted:

### III.

Condemnation of Defendant's Property by Plaintiff Would Constitute the Taking of Private Property for Private Use in Violation of Section 17 of



Article II of the Constitution of the State of Arizona.

\* \* \*

Respectfully submitted,

DARNELL & ROBERTSON

By GEORGE R. DARNELL,

A Member of the Firm

Attorneys for Defendant.

Copy received this 9th day of March, 1944.

J. D. LYONS

City Attorney

THOS. H. McKAY

Assistant City Attorney

Attorneys for Plaintiff

[Endorsed]: Filed Mar. 9, 1944. [25]

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[Title of District Court and Cause.]

ADDITIONAL MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
DEFENDANT'S AMENDMENT OF MO-  
TION TO DISMISS

. . . The Court, therefore, may determine as a matter of law under the provisions of Section 17 of Article 2 of the State Constitution and the provisions of Section 27-907 of the Code that the proposed taking is in violation of and contrary

to the State Constitution, and contrary to law and void.

Respectfully submitted,  
DARNELL & ROBERTSON  
By GEORGE R. DARNELL  
A member of the Firm  
Attorneys for Defendant

Dated this 11th day of March, 1944.

Copy received this 11th day of March, 1944.

J. D. LYONS, JR.

City Attorney

THOS. H. McKAY

Assistant City Attorney

Attorney for Plaintiff

[Endorsed]: Filed Mar. 11, 1944. [26]

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[Title of District Court and Cause.]

ADDITIONAL MEMORANDUM OF AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND THE AMENDMENT OF SAID MOTION

I.

An Election Is Necessary to Empower Plaintiff to Acquire a Utility. \* \* \*

II.

\* \* \* Statutes of Arizona Do Not Make Adequate and Appropriate Provision for Ascertaining the

Constitutional Compensation Which Defendant  
Would Be Entitled to Receive. \* \* \*

Respectfully submitted,

DARNELL & ROBERTSON

By GEORGE R. DARNELL,

A Member of the Firm

Attorneys for Defendant.

Copy received this 17th day of March, 1944.

J. D. LYONS, JR.

City Attorney

THOS. H. McKAY

Assistant City Attorney

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 17, 1944. [27]

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[Title of District Court and Cause.]

Minute Entry of April 3, 1944

This case comes on regularly for hearing this day on the defendant's motion to dismiss. George Darnell, Esquire, is present as counsel for the Defendant. John D. Lyons, Esquire, is present on behalf of the Plaintiff. Harry O. Juliani, Esquire, is present on behalf of the Intervener.

It Is Ordered that the defendant's motion to dismiss be passed and stricken from the calendar until called up by either party on five days notice.

[28]

[Title of District Court and Cause.]

Minute Entry of September 1, 1944

Thomas J. Elliott, Esquire, is present on behalf of the plaintiff, and on motion of said counsel.

It Is Ordered that Thomas J. Elliott, Esquire, be and he is substituted as counsel for the plaintiff in the place and stead of John D. Lyons, Jr.

George R. Darnell, Esquire, and Lawrence V. Robertson, Esquire, are present on behalf of the defendant. Defendant's motion and amended motion to dismiss is now duly argued. Whereupon, at the hour of 11:05 a. m.

It Is Ordered that the further argument of this case be continued to the hour of 11:15 a. m., this date, to which time counsel are excused.

Subsequently, at the hour of 11:15 a. m., all counsel being present pursuant to recess, further argument is now had.

Whereupon, at the hour of 12:00 noon,

It Is Ordered that the further argument of this case be continued to the hour of 2:00 p. m., this date, to which time the counsel are excused.

Subsequently, at the hour of 2:00 p. m., all counsel being present pursuant to recess, further argument is now had.

Whereupon, at the hour of 3:30 p. m.,

It Is Ordered that the further argument of this case be continued to the hour of 3:40 p. m., this date, to which time counsel are excused.

Subsequently, at the hour of 3:40 p. m., all coun-



sel being present pursuant to recess, further argument is now had.

Whereupon, at the hour of 4:45 p. m.,

It Is Ordered that the further argument of this case be continued to the hour of 10:00 a. m., Saturday, September 2, 1944, to which time counsel are excused. [29]

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[Title of District Court and Cause.]

Minute Entry of September 5, 1944

Thomas J. Elliott, Esquire, Harry O. Juliani, Esquire, and Gaynor K. Stover, Esquire, are present on behalf of the plaintiff, and George R. Darnell, Esquire, and Lawrence V. Robertson, Esquire, are present on behalf of the defendant. All counsel being present pursuant to recess, further argument on defendant's motion and amended motion to dismiss are now had.

Whereupon, at the hour of 4:30 P. M.,

It Is Ordered that the further argument of this case be continued to the hour of 10:00 A. M., Wednesday, September 6, 1944, to which time all counsel are excused. [30]

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[Title of District Court and Cause.]

Minute Entry of September 6, 1944

Thomas J. Elliott, Esquire, Harry O. Juliani, Esquire, and Gaynor K. Stover, Esquire, are pres-

ent on behalf of the plaintiff, and George R. Darnell, Esquire, and Lawrence V. Robertson, Esquire, are present on behalf of the defendant. All counsel being present pursuant to recess, further argument on defendant's motion and amended motion to dismiss are now had.

Whereupon, at the hour of 12:00 noon,

It Is Ordered that the further argument of this case be continued to the hour of 2:00 p. m., this date, to which time all counsel are excused.

Subsequently, at the hour of 2:00 p. m., all counsel being present pursuant to recess, further argument is now had.

Whereupon, It Is Ordered that the defendant's motion and amended motion to dismiss be submitted, and by the Court taken under advisement.

[31]

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[Title of District Court and Cause.]

Minute Entry of September 8, 1944

Defendant's motion to dismiss and amended motion to dismiss having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said motion to dismiss and amended motion to dismiss be, and the same are hereby granted. [32]

In the United States District Court  
For the District of Arizona

Minute Entry of Wednesday, September 20, 1945

Civ. No. 212 Tucson

CITY OF TUCSON, a Municipal Corporation,  
Plaintiff,

vs.

THE TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Defendant,

JUDGMENT DISMISSING ACTION ON DE-  
FENDANT'S MOTION AND AMENDED  
MOTION TO DISMISS

The motion and amended motion of the defendant in the above entitled cause to dismiss the above entitled action, on the ground that the complaint herein fails to state a claim upon which relief can be granted, having been finally argued and submitted to the court on the 6th day of September, 1944, and the said motion and amended motion of defendant having been granted by the court on the 8th day of September, 1944, and

More than ten (10) days having elapsed since the granting of said defendant's motions by the court, and the plaintiff not having pleaded further herein;  
Now, therefor,

It Is Hereby Ordered, Adjudged and Decreed:

That this cause be, and hereby is, dismissed, and that defendant recover from plaintiff its costs here-

in expended in the amount of Forty-Two and 50/100 Dollars (\$42.50).

Done in Open Court this 20th day of September, 1944.

ALBERT M. SAMES

District Judge

Copy received and approved as to form this 20th day of September, 1944.

THOS. J. ELLIOTT

City Attorney [33]

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[Title of District Court and Cause.]

### DOCKET ENTRIES

1944

#### Filings-Proceedings

Mar 9—Darnell pres; Lyons pres; Darnell offers amendment to deft's motion to dismiss, Lyons states no objection, inasmuch as matter is jurisdictional which under rule deft has right to raise; Order allow deft file amendment and Order extend time of counsel to file memo on grounds one and two of motion to dismiss, heretofore argued, to March 16, 1944; and order allow Lyons to March 16th, 1944, to file memo in re amendment to motion to dismiss today filed; and Order fix Monday, March 20, 1944, as date for argument on Third ground of Motion to Dismiss.



- 5 Mar 9—File defendant's amendment to defendant's motion to dismiss.
- 14 Aug 23—File deft's notice of hearing on deft's motion to dismiss and deft's amendment of motion to dismiss for September 1, 1944.
- 15 Sep 20—Ent & file Judgment dismissing action on deft's motion and amended motion to dismiss, taxing costs for deft at \$42.50.
- 16 Sep 20—File deft's cost bill, approved by counsel for pltf.
- Sep 20—Ent costs as taxed in JD.
- Oct 7—Issue notice to counsel of entry of judgment.
- 17 Dec 19—File notice of appeal to the Ninth Circuit Court of Appeals for the Ninth Circuit.
- Dec 19—Mail copy of notice of appeal to Darnell & Robertson.
- 18 Dec 19—File cost bond on appeal (U.S.F&G Co., \$250.00). [34]
- 

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Notice is hereby given that the City of Tucson, a municipal corporation, plaintiff in the above entitled action, hereby appeals to the Circuit Court of

Appeals for the Ninth Circuit from the final judgment entered in this action on the 20th day of September, 1944.

THOS. J. ELLIOTT

Attorney for Plaintiff and  
Appellant.

Copy received this 19th day of December, 1944.

DARNELL & ROBERTSON

By L. V. ROBERTSON

Attorneys for Defendant

[Endorsed]: Filed Dec. 19, 1944. [35]

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[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That, City of Tucson, a municipal corporation, plaintiff in the above entitled action as Principal, and United States Fidelity and Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and authorized and qualified to be and become surety on judicial bonds within the State of Arizona, as surety, are held and firmly bound unto the Tucson Gas, Electric Light and Power Company, a corporation, defendant in the above entitled action, in the sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to the said Tucson Gas, Electric Light and Power Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally by these presents.

Signed with our seals and dated this 19th day of December, 1944.

Whereas, on September 20, 1944, in an action pending in the United States District Court for the District of Arizona, between City of Tucson, a municipal corporation, as plaintiff, and Tucson Gas, Electric Light and Power Company, a corporation, as defendant, a judgment was rendered against the said plaintiff, and the said plaintiff having filed in said Court a Notice of Appeal to the United States Circuit Court for the Ninth Circuit at San Francisco, in the State of California;

Now, the condition of the above obligation is such that if the said City of Tucson, a municipal corporation, shall prosecute said appeal to effect and if for any reason the appeal is dismissed, or if the judgment is affirmed, to satisfy in full and pay all costs as the Appellate Court may adjudge and award in favor of the defendant aforementioned, then the above obligation to be void; otherwise to remain in full force and virtue.

CITY OF TUCSON, a Municipal  
Corporation,

Principal

By HENRY O. JAASTAD

Mayor

[Seal]

UNITED STATES FIDELITY  
AND GUARANTY COM-  
PANY, a Corporation,

Surety

By W. E. LOVEJOY

Attorney in Fact

Attest:

[Seal]

CARL M. HITT

City Clerk [36]

Form of Bond and sufficiency of Sureties approved this ..... day of ....., 1944.

.....

Judge

Copy received this 19th day of December, 1944.

DARNELL & ROBERTSON

By L. V. ROBERTSON

Attorneys for defendant.

[Endorsed]: Filed Dec. 19, 1944. [37]

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[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The point upon which Appellant intends to rely on in this Appeal is as follows:

1. The Court erred in granting judgment dismissing plaintiff's complaint for failure to state a claim.

THOS. J. ELLIOTT

Attorney for Plaintiff and  
Appellant.



Copy received this 28th day of December, 1944.

DARNELL & ROBERTSON

By GEORGE R. DARNELL

Attorneys for Defendant and  
Appellee.

[Endorsed]: Filed Dec. 30, 1944. [38]

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[Title of District Court and Cause.]

STIPULATION AS TO RECORD ON APPEAL

It is hereby stipulated by and between the parties hereto that the record on appeal herein shall consist of the following items:

1. Complaint.
2. Summons With Sheriff's Return.
3. Notice of Filing Petition for Removal to the District Court of the United States.
4. Petition for Removal to the District Court of the United States.
5. Bond for Removal to the District Court of the United States.
6. Order for Removal to the District Court of the United States.
7. Notice of Removal to the District Court of the United States.
8. Motion of Defendant to Dismiss (Page 1, Lines 1 to 22, inc.) with points in support thereof, as follows: I. (Copy lines 27 page 1 to line 5 page 2, inc.). II. (copy lines 28 page 2 to line 4 page 3, inc.); (copy lines 4 to 8 inc. page 5), (copy lines 24 to 29 inc. page 5). [39]

9. Amendment of Motion of Defendant to Dismiss, filed March 9, 1944, (Page 1, lines 1 to 15 inc.) with points in support thereof, as follows: III. (copy line 16 page 1 to line 19 page 1, inc.), (copy lines 26 to end of page 2).

10. Additional Memorandum of Points and Authorities in Support of Defendant's Amendment of Motion to Dismiss, filed March 11, 1944, (lines 6 to 8 inc. page 1) with points in support thereof as follows: (copy lines 11 to 30 inc. page 2).

11. Additional Memorandum of Authorities in Support of Defendant's Motion to Dismiss and the Amendment of Said Motion, filed March 17, 1944, (lines 6 to 8 inc. page 1) with points in support thereof, as follows: I. (copy lines 11 to 13 inc. page 1). II. (copy lines 27 to 30 inc. page 3), (copy lines 17 to 28 inc. page 7).

12. Minute entries dated in 1944 as follows: February 10; March 6, 8; April 3; September 1, 5, 6, 8, 20.

13. Docket entries dated in 1944 as follows: March 9; August 23; September 20; October 7; December 19.

14. Judgment.

15. Notice of Appeal.

16. Bond for Costs on Appeal.

17. Statement of Points on Which Appellant Intends to Rely on Appeal.

18. This Stipulation.

THOS. J. ELLIOTT,

Attorney for Plaintiff and

Appellant.

DARNELL & ROBERTSON

By GEORGE R. DARNELL,

A Member of the Firm

Attorneys for Defendant and

Appellee.

[Endorsed]: Filed Dec. 30, 1944. [40]

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In the United States District Court  
For the District of Arizona

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America,  
District of Arizona—ss.

I. Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of City of Tucson, a Municipal Corporation, Plaintiff, versus The Tucson Gas, Electric Light and Power Company, a corporation, Defendant, numbered Civil-212-Tucson, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 40, inclusive, contain a full, true and correct transcript of the proceedings of said cause

and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Stipulation as to Record on Appeal filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Tucson, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$13.25 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the Seal of the said Court this 15th day of March, 1945.

[Seal]                      EDWARD W. SCRUGGS,  
Clerk. [41]

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[Endorsed]: No. 11005. United States Circuit Court of Appeals for the Ninth Circuit. City of Tucson, a Municipal Corporation, Appellant, vs. The Tucson Gas, Electric Light and Power Company, a corporation, Appellee. Transcript of Record. Upon appeal from the District Court of the United States for the District of Arizona.

Filed March 19, 1945.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 11005

CITY OF TUCSON, a Municipal Corporation,  
Appellant,

vs.

TUCSON GAS, ELECTRIC LIGHT AND  
POWER COMPANY, a Corporation,  
Appellee.

STATEMENT OF POINTS ON APPEAL AND  
DESIGNATION OF RECORD FOR PRINT-  
ING

Comes now the appellant in the above-entitled cause and hereby adopts as its statement of points on which it intends to rely on this appeal the statement of points on appeal as it now appears in the transcript of the record herein.

Appellant hereby designates for printing the entire certified transcript of the record in accordance with "Stipulation As to Record on Appeal" appearing in the original typewritten transcript of the record herein.

THOS. J. ELLIOTT,  
Attorney for Appellant.

Service of the foregoing statement of points and designation of record is acknowledged this 29th day of March, 1945.

DARNELL & ROBERTSON

By LAWRENCE V. ROBERTSON

A Member of the Firm,  
Attorneys for Appellee.

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O'Brien, Clerk.